

46 Am. Jur. 2d Judges § 98

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

2. Interests as Grounds for Disqualification

b. Particular Interests as Grounds for Disqualification

(2) Judge as Party or Witness

§ 98. Disqualification of judge who is party or potential party in own or related case

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West's Key Number Digest

West's Key Number Digest, [Judges](#)  45, 50

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[Interest of judge in an official or representative capacity, or relationship of judge to one who is a party in an official or representative capacity, as disqualification, 10 A.L.R.2d 1307](#)

A person cannot be a judge of his or her own cause.¹ The Code of Judicial Conduct provides that a judge must disqualify him- or herself when the judge is a party to the proceeding.² The rule has been applied to disqualify a judge who is a member of the class in whose behalf a class action is brought.³

Normally, a judge should not sit on litigation involving a party who is a party to other litigation in which the judge him- or herself is a litigant,⁴ although the filing of lawsuits against one or more members of a court does not lead to the conclusion that another member of that court cannot fairly preside in a different matter involving that party.⁵ The fact that all judges in the court have been sued in a case does not require recusal.⁶

A judge is not disqualified merely because a litigant sues or threatens to sue the judge,⁷ on the ground that such an easy method for obtaining disqualification should not be encouraged or allowed.⁸ Similarly, the filing of a sham or frivolous pleading in which a judge is made a party for the sole purpose of disqualifying him or her should not be allowed.⁹

In some cases, merely nominal parties to the record are disqualified to sit as judges,¹⁰ while other decisions treat a nominal party to the record as qualified to sit as judge.¹¹

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Footnotes

- 1 Baez v. Flanders, 798 S.E.2d 232 (Ga. 2017); State v. Brown, 70 Haw. 459, 776 P.2d 1182 (1989); Wythe II Corp. v. Stone, 342 S.W.3d 96 (Tex. App. Beaumont 2011).
- 2 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(2)(a).
- 3 Pahl v. Whitt, 304 S.W.2d 250 (Tex. Civ. App. El Paso 1957).
- 4 Smith v. Smith, 115 Ariz. 299, 564 P.2d 1266 (Ct. App. Div. 1 1977); People v. Lowenstein, 118 Mich. App. 475, 325 N.W.2d 462 (1982).
- 5 In re Disqualification of Corts, 47 Ohio St. 3d 601, 546 N.E.2d 928 (1988).
- 6 Matter of Ronwin, 139 Ariz. 576, 680 P.2d 107 (1983); People v. Lowenstein, 118 Mich. App. 475, 325 N.W.2d 462 (1982).
- 7 Matter of Ronwin, 139 Ariz. 576, 680 P.2d 107 (1983); People v. Lowenstein, 118 Mich. App. 475, 325 N.W.2d 462 (1982); Callahan v. State, 712 S.W.2d 25 (Mo. Ct. App. E.D. 1986); Oakes v. Muka, 56 A.D.3d 1057, 868 N.Y.S.2d 796 (3d Dep't 2008); In re Disqualification of Corts, 47 Ohio St. 3d 601, 546 N.E.2d 928 (1988).
- 8 Matter of Ronwin, 139 Ariz. 576, 680 P.2d 107 (1983); Com. ex rel. Meredith v. Murphy, 295 Ky. 466, 174 S.W.2d 681 (1943).
- 9 Com. ex rel. Meredith v. Murphy, 295 Ky. 466, 174 S.W.2d 681 (1943).
- 10 Dankmer v. City Ice & Fuel Co., 121 W. Va. 752, 6 S.E.2d 771 (1939).
- 11 Bass v. Minich, 194 Ark. 589, 109 S.W.2d 139 (1937); State ex rel. Mitchell v. Sage Stores Co., 157 Kan. 622, 143 P.2d 652 (1943); Thompson v. State, 165 S.W.2d 131 (Tex. Civ. App. Amarillo 1942).

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